

BEFORE THE  
PUBLIC SERVICE COMMISSION OF WISCONSIN

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**PETITION OF SBC AMERITECH WISCONSIN  
FOR SUSPENSION OF WISCONSIN STATUTE § 196.196(1)  
WITH REGARD TO SMALL BUSINESS CUSTOMERS**

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Pursuant to Wisconsin Statute § 196.195, Wisconsin Bell, Inc. ("SBC Ameritech Wisconsin" or "SBC Ameritech") hereby petitions the Public Service Commission of Wisconsin for suspension of Wisconsin Statute § 196.196(1) with regard to business customers with 1 to 3 access lines ("small business customers"). Specifically, Ameritech Wisconsin requests that the Commission suspend the application of § 196.196(1) with respect to telecommunications services provided to small business customers. This suspension is appropriate because effective competition as defined by § 196.195(2) exists for small business customers in Wisconsin. Ameritech Wisconsin respectfully requests that the Commission, at its earliest convenience, hold a hearing on this Petition. See Wis. Stat. § 196.195(2).

**INTRODUCTION**

The Wisconsin legislature took the right approach in 1993 when it deregulated telecommunications services provided to business customers with four or more lines. It recognized that in the presence of effective competition, regulation (especially disparate regulation of competitors) could actually impede rather than promote public and consumer welfare. As a direct result of the legislative deregulation of most business lines, substantial benefits have inured to Wisconsin customers:

- Competition for business customers has flourished. Over 380,000 business lines in SBC Ameritech Wisconsin's territory are served by a provider other than SBC

Ameritech Wisconsin, which represents 34% or about one-third of the business lines in SBC Ameritech Wisconsin's territory. In that same month, business customers throughout the state could choose from at least 36 different companies to provide their telecommunications services.<sup>1</sup> In addition, the PSCW website currently indicates there are 137 active CLECs and 338 active resellers.

- Competitive market forces have fostered product innovation in response to evolving customer telecommunications needs. These innovations have taken the form of technological innovations that allow customers to better manage calls while at home or in the office (such as "Name and Number Delivery" and "Call Control") and products that permit the customer to receive messages through various devices when not in the office ("Unified Messages"). In addition, carriers (including SBC Ameritech Wisconsin) are offering packages of services that respond to customer preferences, including newly packaged offerings of basic service and multiple traditional telecommunications features as well as DSL, internet service, cellular usage, and the like. Such innovative packages are customized to the needs of different types of businesses.
- Many packages combine local access with local and toll usage in blocks of calls and time offering the business customer relative stability in their monthly bill by de-emphasizing usage-based pricing.
- Similarly, pricing structures for business services to mid-size and large business customers have evolved to meet the different needs of distinct types of customers. Carriers have pricing structures that recognize volume and term commitments and these pricing structures have encouraged efficient use of Wisconsin telecommunications networks.
- The improvements described above occurred relatively quickly. In the unlikely event any such improvements would have occurred in the presence of continued regulation, they would have occurred at a much slower pace.
- The deregulatory period for business services has been characterized by substantial investment in Wisconsin's telecommunications infrastructure. Indeed, Wisconsin led the nation in the percentage of business lines that competitors were able to serve with their own facilities with over 83%, as reported in the last FCC report containing such a statistic.<sup>2</sup> Recent data indicates the number may now be even higher. Further, CLECs have deployed a total of 33 switches that have telephone numbers assigned to them and are able to serve customers in SBC Ameritech Wisconsin territory. Also, there are 24 additional locations with

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<sup>1</sup> This number includes only those competitors who offer business lines using SBC Ameritech Wisconsin network elements or resell SBC Ameritech Wisconsin service; it does not include competitors who utilize solely their own facilities. In addition, the PSCW website currently indicates there are 137 active CLECs and 338 active resellers. See <http://psc.wi.gov/telecom/LECresel/ind lec.htm> (as of August 2, 2002).

<sup>2</sup> See [http://www.fcc.gov/Bureaus/Common\\_Carrier/Reports/FCC-State\\_Link/IAD/lcomp99-1.pdf](http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/IAD/lcomp99-1.pdf) (Table 3.4).

remotely located CLEC modules, which serve to expand the reach of the CLEC switches.

- Unlike many other states, competition in Wisconsin is predominantly facilities-based, and the proportion of facilities-based competition is growing dramatically. Facilities-based competition is the optimal form of competition. As FCC Chairman Powell has stated, "[f]acilities-based competition is the ultimate objective."<sup>3</sup> Between March 2000 and March 2001, the number of facilities-based carriers more than doubled from nine to 21. Between December 1999 and March 2002, the number of facilities-based business lines served by CLECs in the SBC Ameritech Wisconsin territory increased approximately threefold to well over 300,000. Over 80% of lines served by CLECs in SBC Ameritech Wisconsin's serving area are facilities-based. The high level of facilities-based competition indicates that Wisconsin's brand of competition is healthy and here for the long run.

The competitors serving larger business customers are also increasingly serving Wisconsin's small business customers. Removing price regulation for small business services will deliver even greater benefits of competition to these customers. Current price regulation applies only to SBC Ameritech Wisconsin. Such disparate regulation stands between Wisconsin consumers and the optimal levels of competitive pricing, packaging and product development that arise in the presence of unfettered competition. Removal of this disparate regulation will increase pressure on competitors to provide competitive pricing structures and innovative product sets to small business customers.

Moreover, the dramatic changes in local competition since 1993 provide the Commission with even more assurance that suspending price caps on small business services will provide only public benefit, without any offsetting public harm. The Federal Telecommunications Act of 1996 (TA '96)<sup>4</sup> has increased the options that SBC Ameritech Wisconsin's competitors have to provide services to business customers. In 1993, competitors had to use largely their own

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<sup>3</sup> FCC Chairman Michael K. Powell, "'Digital Broadband Migration' Part II", Press Conference, October 23, 2001(as prepared for delivery).

facilities to serve such customers. Now, they can use and are using a combination of SBC Ameritech Wisconsin's and their own facilities to serve all business customers. Indeed, as noted above, SBC Ameritech Wisconsin's competitors led the nation in the ability to access SBC Ameritech Wisconsin's access lines and provide local service to customers when that statistic was last reported by the FCC. In fact, current data suggests that SBC Ameritech Wisconsin's addressability figure may have climbed substantially. The Act also required SBC Ameritech Wisconsin to allow competitors to use its facilities at forward-looking, Commission-approved, cost-based rates. Should SBC Ameritech attempt to raise prices to small business customers above a competitive level, the already high level of market penetration and the even higher level of addressability by competitive facilities suggest that its competitors have the ability to quickly force prices down to a competitive level.

In addition, Wisconsin Statute §196.195 provides that the Commission can revoke any suspension it orders. Thus, should this suspension not produce the intended benefits, the Commission has the ability to re-impose any regulation it suspends. Moreover, Ameritech Wisconsin has limited this Petition for suspension to only a single (albeit an important) section of the statute. All other statutory provisions would remain in effect, including those that prohibit unreasonable discrimination, allow consumer complaints, and require tariff filings.

Wisconsin should be proud of the fact that its bold efforts in deregulation have delivered substantial benefits of competition to large and mid-size business customers. Given the undeniable existence of effective competition in the small business segment, now is the time to extend the full benefits of competition to small business customers by removing the asymmetric price cap regulation that hinders only one of the competitors in that segment. The Commission

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<sup>4</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (codified in Title 47 of the United

can do so with firm assurance that such action will benefit, and not harm, Wisconsin's small business customers.

## I. BACKGROUND

Wisconsin has long recognized the importance of deregulation in delivering the benefits of competition. In 1985, Wisconsin Act 297 included a statutory provision that provides for the suspension of statutory provisions regarding telecommunications services when "effective competition" exists for those services. See Wis. Stat. § 196.195. Moreover, "[t]here is a preference in [Wisconsin Act 297] to replace regulatory oversight of telecommunications services with marketplace regulation, provided that the competition in a given market is adequate to protect the public interest."<sup>5</sup> Specifically, Act 297 recognized that regulation should not hinder competition, and that, with limited exception, regulation should be the same for all providers of a service. In 1993, the Wisconsin legislature built upon its efforts to foster competition in the telecommunications industry by enacting Wisconsin Act 496. Among other things, Act 496 eliminated price regulation for all business customers with more than three telephone lines. Act 496 has thus far been very effective at achieving its goals — competition is at all-time highs, and market participants are better able to offer services and pricing packages which respond rapidly to the needs of consumers. As such, Act 496 achieved its purpose of facilitating economic development and protecting consumers while phasing out regulation in light of growing competition.

TA '96 caused an even more dramatic increase in local telephone competition by removing barriers to that competition. It required incumbent local exchange carriers, like SBC

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States Code).

<sup>5</sup> Findings of Fact, Conclusions of Law and Order, Investigation of the Petition of Wisconsin Bell, Inc., (d/b/a Ameritech Wisconsin) to Suspend Application of s. 196.196(1), Stats., as It Pertains to the IntraLATA Basic

Ameritech Wisconsin, to interconnect with competitors and to further enable competitors to compete against them in three different ways: (1) by reselling the ILEC's retail services, (2) by using some or all of the ILEC's facilities, or (3) by using their own facilities. Moreover, TA '96 guaranteed these competitors that they could use SBC Ameritech Wisconsin facilities at cost-based, Commission-approved rates. Finally, TA '96 prevented SBC Ameritech entry into the interLATA long distance market until SBC Ameritech proves that its local markets are fully and irreversibly open to competition. Thus, TA '96 has enabled — and will continue to enable — dramatic increases in competition in Wisconsin.

As a result of TA '96, the Wisconsin legislature's deregulation of most business services, and the pro-competitive policies of this Commission, Wisconsin has attracted intense competition for business services. As noted above, as of March 2002, competitors have invested in operational collocation facilities that enable them to serve more than 83% of SBC Ameritech Wisconsin's business lines, and competitors actually serve over 380,000 lines for business customers. And SBC Ameritech Wisconsin has attracted competition from providers whose business strategies focus on small and mid-size business customers, including McLeodUSA, Choice One, and TDS MetroCom, among others.<sup>6</sup> These competitive achievements not only distinguish the level and nature of competition in Wisconsin from that of most other states, but they also demonstrate that the Wisconsin legislature was absolutely right when it created a framework to encourage competition through deregulation.

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Message Telecommunications Service It Offers in Wisconsin, Docket 6720-TI-113 (MTS Order), at 8 (Dec. 5, 1996).

<sup>6</sup> See <http://www.mcleodusa.com/html/ir/corpprofile.php3> (as of August 2, 2002); <http://www.choiceonecom.com/ourcompany/> (as of August 2, 2002).

## II. REQUIREMENTS OF §196.195

In 1996, when the Commission suspended the price cap on Ameritech Wisconsin's intraLATA toll service, it provided helpful guidance on the purpose and mechanics of §196.195.

The first task in a case under §196.195 is to define the relevant market.<sup>7</sup>

The term "relevant market" in section 196.195 is understood to have the same meaning that the phrase has in antitrust law. In antitrust law, a relevant market describes "the array of firms that currently produces or potentially will produce products that are sufficiently close substitutes to take business away from any firm or group of firms that attempt to exercise market power. Market power is the ability of a firm to raise prices above competitive levels without promptly losing a substantial portion of its business to existing rivals or firms that become rivals as a result of the price increase."<sup>8</sup>

The next step is to assess the existence of effective competition in the relevant market using the seven statutory factors:

1. The number and size of telecommunications utilities or other persons providing the same, equivalent or substitutable service in the relevant market.
2. The extent to which the same, equivalent or substitutable service is available in the relevant market.
3. The ability of customers in the relevant market to obtain the same, equivalent or substitutable services at comparable rates, terms and conditions.
4. The ability of telecommunications utilities or other persons to make the same, equivalent or substitutable service readily available in the relevant market at comparable rates, terms and conditions.
5. The relevant market power of each telecommunications utility or other person providing the same, equivalent or substitutable service in the relevant market and any apparent trends in how the market power of each telecommunications utility may change in the future.

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<sup>7</sup> MTS Order at 10-12.

<sup>8</sup> Id. at 11 (quoting Pitofsky, New Definitions of Relevant Market and the Assault on Antitrust, 90 Col. L. Rev. 1805, 1806 (1990)).

6. Any affiliation of any telecommunications utility providing the service in the relevant market which may affect competition.
7. The existence of any significant barrier to the entry or exit of a provider of the service in the relevant market.

Wis. Stat. § 196.195(2).

The intent of the Wisconsin legislature in developing the seven factors for "effective competition" was to permit the suspension of statutory provisions when a "geographic area or market for a specified telecommunications service is sufficiently competitive."<sup>9</sup> The lynchpin is "whether sufficient competition exists in the market to protect consumers."<sup>10</sup> Accordingly, the Commission has held that effective competition is defined as "the existence of competitive forces which are sufficient by themselves, or in combination with regulatory safeguards to serve the public interest."<sup>11</sup>

If the Commission finds that effective competition exists, it then must proceed to the final step: determining the level of regulation that will serve the public interest. See Wis. Stat. § 196.195(3). The legislature has established a presumption of regulatory parity unless the public interest requires disparate regulation:

The level of regulation imposed upon all telecommunications utilities providing the service in that market shall be equal unless the commission finds that the public interest requires that different regulatory requirements be imposed.

Wis. Stat. § 196.195(3)(a).<sup>12</sup> The public interest focuses on consumer welfare and competition overall, but not the welfare of competitors.<sup>13</sup> In this case, it is clear that competition, the public

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<sup>9</sup> Wisconsin S.B. 318, 1985-1986 Leg., at p. 16 (enacted as Wis. Act 297).

<sup>10</sup> MTS Order at 23.

<sup>11</sup> Id. at 12.

<sup>12</sup> Id. at 25.



interest and the welfare of small business consumers would be enhanced by the limited suspension requested in this petition.

### III. ARGUMENT

**A. The relevant market includes all local exchange service provided to small business customers, at a minimum.**

As noted, the antitrust standards for product market definition apply in cases under Wis. Stat. §196.195. A well accepted antitrust standard for determining which products to include in a relevant product market is “reasonable interchangeability of use.”<sup>14</sup> Under that standard, the relevant market that encompasses SBC Ameritech Wisconsin’s “standard business access lines and usage by small businesses with no more than 3 access lines” (Wis. Stat. §196.196(1)(a)1) includes, at a minimum, the switched access local exchange services provided to all businesses by SBC and competitive local exchange carriers (CLECs) regardless of whether their service is based on resale of SBC services, the unbundled network element platform (UNE-P), individual unbundled network elements (UNEs) such as unbundled loops, their own facilities, or a combination of the foregoing options.

**B. There is effective competition in the relevant market encompassing Wisconsin small business customers as judged by the seven factors in §196.195(2).**

The Commission has “found that effective competition is properly defined as the existence of competitive forces which are sufficient by themselves, or in combination with regulatory safeguards to serve the public interest.”<sup>15</sup> As demonstrated below, SBC Ameritech

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<sup>13</sup> *Id.* at 23 (“the preeminent purpose of the state’s public utility law is ‘the protection of the consuming public rather than competing utilities’” (citation omitted)); *id.* at 23-24 (“[t]he legislature enacted Chapter 196 to protect the interests of ratepayers, and did not create any additional protection for competitors that is not provided for under the Sherman Act”).

<sup>14</sup> *Brown Shoe Co. v. United States*, 370 U.S. 294, 325 (1962).

<sup>15</sup> *MTS Order* at 12.

Wisconsin faces effective competition in the relevant market as judged against the seven factors in §196.195(2).

1. **SBC Ameritech Wisconsin faces competition from many other, well-established providers of local telecommunications services to business customers of all sizes throughout Wisconsin.**

In evaluating the first factor, the Commission first looks to market share.<sup>16</sup> As noted previously, competitors serve one-third of the business lines in SBC Ameritech Wisconsin's territory, and there are at least 36 companies currently serving business customers in Wisconsin.<sup>17</sup> In addition, the PSCW website currently indicates there are 137 active CLECs and 338 active resellers in Wisconsin. SBC Ameritech Wisconsin also faces competition for small business customers from wireless providers.

Further, Wisconsin's small business customers, in particular, clearly have a wide array of competitive alternatives. SBC Ameritech Wisconsin faces competition for small business customers not only from large, national providers, such as AT&T and MCI, who target larger metropolitan areas, but also and perhaps most importantly, from regional providers, such as McLeodUSA, TDS MetroCom and Choice One, who target smaller cities and towns throughout Wisconsin. As demonstrated by both their marketing materials, press releases and their actual market entry, this competition is real and present throughout the state.

Moreover, these regional providers are well established entities. Choice One currently operates in 30 markets in eleven states.<sup>18</sup> McLeodUSA operates in 25 states and has recently received an additional investment of about \$175 million from Forstmann Little & Co., sold its Directory Publishing business for approximately \$600 million, and received a revolving credit

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<sup>16</sup> Id.

<sup>17</sup> Again, this figure only covers competitors who use SBC Ameritech Wisconsin's network.

<sup>18</sup> See <http://choiceonecom.com/ourcompany/> (as of August 2, 2002).

line of \$110 million that may be increased to \$160 million.<sup>19</sup> TDS, which is TDS MetroCom's parent company, has approximately 3.2 million customers across 37 states.<sup>20</sup> It also has substantial other telecommunications-related businesses, and thus TDS MetroCom has access to additional financial resources.

**2. SBC Ameritech Wisconsin's competitors have made their business services widely-available throughout SBC Ameritech Wisconsin's service areas.**

"This factor requires the Commission to evaluate the degree to which competing firms in the relevant market have actually succeeded in their efforts to enter the market."<sup>21</sup> SBC Ameritech Wisconsin's competitors have clearly been successful in entering the market and serving small business customers throughout the state. Again, over one-third of business lines in SBC Ameritech Wisconsin's service area currently are served by competitors. While competitors have been more successful in the more densely populated areas of the state, such as Milwaukee, Madison, Green Bay and Appleton, competitors have also made substantial gains throughout SBC Ameritech Wisconsin's serving territory. Indeed, the most recent relevant data from the FCC demonstrates that SBC Ameritech Wisconsin faces competition from at least one provider in 96% of the zip codes in SBC Ameritech Wisconsin's service area.<sup>22</sup>

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<sup>19</sup> See <http://www.mcleodusa.com/html/ir/singleStory.php3?pid=167&type=press> (as of August 2, 2002).

<sup>20</sup> See <http://www.tdsmetro.com/about/info.shtml> (as of August 2, 2002).

<sup>21</sup> MTS Order at 16.

<sup>22</sup> See [www.fcc.gov/Bureaus/Common\\_Carrier/Reports/FCC-State\\_Link/IAD/czip1201.pdf](http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/IAD/czip1201.pdf) (as of December 31, 2001, there was at least one CLEC actually providing service in 100 of the 104 zip codes in SBC Ameritech Wisconsin's service area).

**3. Wisconsin business customers are able to obtain and have obtained local telephone services from competitors at rates, terms and conditions that are equal to or better than those of SBC Ameritech Wisconsin.**

Competitors currently offer the same local services that SBC Ameritech Wisconsin offers in virtually every area of the state served by SBC. In addition, competitors offer rates that are less than SBC Ameritech's current rates. And, as noted above, the competitive offerings have been successful; competitors already serve over one-third of the business lines in SBC Ameritech Wisconsin's service area.

In addition, "[t]his statutory factor requires a demonstration that the telecommunications network does not, by its design, disparately favor the product of one competitor over that of another."<sup>23</sup> TA '96 required SBC to open its network to competitors. Competitors have taken full advantage of those requirements. Currently, 36 competitors use SBC Ameritech Wisconsin's network to serve business customers. Moreover, competitors have operational collocation facilities in place today to serve over 83% of the business lines SBC Ameritech Wisconsin provides to business customers. Consequently, these competitors can quickly offer local service to other small business customers as those providers choose and as those customers demand.

To the extent there is any disparity between the offerings of these competitors and SBC Ameritech Wisconsin, that disparity favors the competitors. SBC Ameritech Wisconsin's competitors are able to — and do — offer Wisconsin small business customers packages of services which include both local and long distance communications, something that SBC Ameritech Wisconsin is currently prohibited from doing. Notably, the competitors' promotional materials posit this ability as a competitive advantage.

**4. SBC Ameritech Wisconsin's competitors are able to make local telephone service available to business customers at rates, terms and conditions that are equal to or better than those offered by SBC Ameritech Wisconsin.**

"This finding addresses the differences in regulation that apply to the various competitors in the market."<sup>24</sup> Competitors currently face far less regulation than SBC on both the federal and the state level, and this statement will still be true after the Commission grants this petition. Because these competitors face less regulation than SBC Ameritech Wisconsin does, these competitors are able to make and are making local telephone service available to business customers at equal or better rates, terms and conditions than SBC Ameritech Wisconsin.

On the federal side, TA '96 removed all regulatory and legal barriers to local competition, as demonstrated by the number of business customers that SBC Ameritech Wisconsin's competitors already serve. TA '96 accomplished this by imposing substantial duties on incumbents that flow to competitors. As noted previously, because of TA '96, SBC Ameritech Wisconsin's competitors have access to serve every single one of SBC Ameritech Wisconsin's business customers immediately through resale at a Commission-approved discount applied to SBC Ameritech Wisconsin's retail rates. Competitors also have the current ability to service almost every business line (over 83%) by accessing SBC Ameritech Wisconsin lines using operational collocation facilities those providers currently have in SBC Ameritech Wisconsin's central offices throughout the state. Further, competitors may purchase unbundled network elements and combinations thereof from SBC Ameritech Wisconsin at cost-based, Commission approved rates. In addition, because these competitors are able to and do offer long distance service in a package with local service, something SBC Ameritech Wisconsin cannot

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<sup>23</sup> MTS Order at 16.

<sup>24</sup> Id. at 18.

legally do, SBC Ameritech Wisconsin's competitors have an additional advantage in the market. Under state law, SBC again faces much more regulation than its competitors. Some examples, in addition to price caps, include tariffing requirements and restrictions on discontinuance of service.

**5. SBC Ameritech Wisconsin lacks significant market power in the market that includes small business local telecommunications services.**

This factor relates to market share and the “ability to act without regard to market pressure.”<sup>25</sup> As already noted, competitors have garnered a very substantial share; they serve one-third of business lines in SBC Ameritech Wisconsin’s service area. Moreover, since at least 1999, the number of CLEC business lines has been on the rise, while SBC Ameritech Wisconsin’s business lines have been on the decline. The ability to ignore market pressure is directly related to the seventh factor – entry barriers. In particular, the ease of entry (described in more detail under the rubric of the seventh factor) ensures that SBC Ameritech Wisconsin lacks market power. If, after suspension of price caps on small business lines, SBC Ameritech Wisconsin were to attempt to raise prices inappropriately, then the fact that CLECs are extensively collocated (as well as able to obtain at a discount and resell SBC retail service) means that they could expand quickly to serve customers who would be disadvantaged. The pressure imposed by the ability of CLECs to reach every SBC customer limits or eliminates SBC’s market power. Finally, as discussed above, because SBC Ameritech Wisconsin currently is barred from offering long distance services to any customer, SBC Ameritech Wisconsin’s competitors have greater market power to offer local and long distance services to small business customers — an advantage those competitors widely promote.

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<sup>25</sup> Id. at 20.

6. **SBC Ameritech Wisconsin has no affiliation with any other telecommunications utility providing small business services in Wisconsin.**

None of the telecommunications utilities that compete with SBC Ameritech Wisconsin for small business customers is affiliated with SBC Ameritech Wisconsin.

7. **SBC Ameritech Wisconsin's competitors do not face any significant entry barriers to providing business services in Wisconsin.**

As discussed above, TA '96 removed all legal and regulatory barriers to entry in the local telecommunications market. As also discussed above, TA '96 substantially reduced economic and operational barriers to entry by allowing local competitors to use SBC Ameritech Wisconsin's facilities at cost-based rates; to access those facilities in SBC Ameritech Wisconsin's existing central offices throughout the state; and to resell SBC retail services purchased at a wholesale discount. As a result, SBC Ameritech Wisconsin's competitors do not face any significant entry barriers to providing services to small business customers. Indeed, competitors' actual entry and successful growth at SBC Ameritech Wisconsin's expense as well as the extensive amount of CLEC collocation, CLEC switches and other CLEC facilities in place demonstrate the ease of entry.

**C. Suspending §196.196(1) is consistent with §196.195(3).**

Under §196.195(3), after a determination of effective competition has been made, the Commission also is required to determine the level of regulation appropriate for SBC Ameritech Wisconsin in the small business market. Section 196.195(3) imposes a presumption of equal regulation:

The level of regulation imposed upon all telecommunications utilities providing the service in that market shall be equal unless the commission finds that the public interest requires that different regulatory requirements be imposed.

Wis. Stat. § 196.195(3)(a).<sup>26</sup> Thus, in the presence of effective competition, disparate regulation can be sustained only on a showing that the public interest requires it.

In determining whether the public interest requires disparate regulation, the statute instructs the Commission to ensure that competition is not hindered, thus equating competition and parity of regulation with the public interest. Wis. Stat. § 196.195(3)(c). The Commission confirmed this proposition in its order suspending the price cap on Ameritech Wisconsin's intraLATA toll service when it found "that reducing or eliminating regulations that disparately apply to one market participant will enhance the competitiveness of the intraLATA toll market."<sup>27</sup>

In addition, the legislature also acknowledged a public interest in decreasing the level of regulation. As one court put it, Act 297 "'recognizes only that less governmental regulation promotes competition.'"<sup>28</sup> In other words, the public interest is promoted by decreasing regulation in markets that are effectively competitive. Similarly, the Commission stated in its order suspending the price cap on Ameritech Wisconsin's intraLATA toll service that "competition under a lesser degree of regulation will advance the public interest in an efficient, competitively-priced market" and reiterated that "'consumers are best served by vigorous competition.'"<sup>29</sup> The public interest focus on competition stems from the ultimate goal of the statute, which is to enhance consumer welfare, but not necessarily the welfare of competitors.<sup>30</sup>

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<sup>26</sup> Id. at 25.

<sup>27</sup> Id.

<sup>28</sup> Id. at 23-24 (quoting MCI Telecommunications Corp. v. Public Serv. Comm., 164 Wis.2d 489, 497, 476 N.W.2d 575, 579 (Ct. App. 1991)).

<sup>29</sup> Id. at 25.

<sup>30</sup> Id. at 23 ("the preeminent purpose of the state's public utility law is 'the protection of the consuming public rather than competing utilities'" (citation omitted)); id. at 23-24 ("[t]he legislature enacted Chapter 196 to protect the interests of ratepayers, and did not create any additional protection for competitors that is not provided for under the Sherman Act").



Based on the foregoing guidance, the Commission should eliminate price regulation of SBC Ameritech Wisconsin's offering of services to small business customers as it did in 1996 with intraLATA toll. Specifically, it should suspend Wis. Stat. §196.196(1), which regulates SBC Ameritech Wisconsin's pricing to small business customers.<sup>31</sup> SBC Ameritech is not seeking suspension of any other provisions. Suspension of price regulation of small business services is consistent with the public interest for the reasons described below.

First, suspending price regulations furthers the legislative goal that there be equal regulation of the same services for providers of those services. SBC Ameritech's competitors do not face price and price-related regulation. Enabling SBC Ameritech to set its prices in the similar way that its competitors do is thus consistent with §196.195(3)(a). Meanwhile, SBC Ameritech will remain subject to TA '96 while its competitors face no such regulation.

Second, enabling SBC Ameritech to set its prices based on competitive pressures and the marketplace will unleash the full benefits of competition, not just the partial benefits that have been realized to date. Pricing competition and attractive service choices for small business customers have increased as a result of deregulation of the medium and large business segments, but can only be maximized by eliminating price regulation of the small business segment. Removal of pricing regulation for such customers will enable SBC Ameritech to quickly implement efficient pricing structures and service combinations tailored to specific types of small business customers that are based on term, volume and other factors that are used in other competitive marketplaces. It will also enable SBC Ameritech Wisconsin to respond more quickly to the innovations of competitors. This increased flexibility will, in turn, force competitors to be more creative and innovative as well. The end result will be a more

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<sup>31</sup> This would, of course, include removal of small business from the service quality penalty mechanism under

competitive market, which means a more efficient allocation of resources and increased maximization of consumer welfare -- more bang for the small business customer's buck. Continued regulation, on the other hand, is much less likely to achieve these results and hinders competitive forces when effective competition exists.

Third, there is no potential for harm to the public interest from the removal of price cap regulation. Should SBC Ameritech attempt to raise prices to small business customers above a competitive level, the already high level of market penetration, the even higher level of addressability by competitive facilities, and SBC's obligations under TA '96 that have dismantled entry barriers suggest that its competitors have the ability to quickly force prices down to a competitive level. In addition, the Commission retains statutory authority to revoke its suspension of price regulation. See Wis. Stat. §196.195(10). Both of these factors, existing and future competitive pressures, as well as the possibility of Commission revocation, guarantee that SBC Ameritech Wisconsin's pricing will be market-driven. In addition, the consumer protections in Chapter PSC 165 of the Wisconsin Administrative Code will not be disturbed by the granting of this limited Petition. Consequently, suspending pricing regulation for these services will benefit the public interest.

Finally, granting this limited Petition will have no binding effect on the Commission's pending review of SBC Ameritech Wisconsin's compliance with §271 of TA '96. Although it may be relevant to §271 compliance, the more limited showing Ameritech Wisconsin must make under §196.195 does not — and is not intended to — conclusively or presumptively determine any issues in those proceedings.

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Wisconsin Statute section 196.196(1) and Chapter PSC 163 of the Wisconsin Administrative Code.

#### IV. CONCLUSION

For all the reasons discussed in this Petition and pursuant to §196.195(5), Ameritech Wisconsin requests that §196.196(1) be suspended for small businesses with less than four access lines.

Dated: August 2, 2002

Respectfully submitted,

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